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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. RANDY JAY BROWN, Defendant and Appellant.	E047292 (Super.Ct.No. FWV038548) **OPINION**

APPEAL from the Superior Court of San Bernardino County. Gerard S. Brown and Douglas M. Elwell, Judges.* Affirmed.

Brent F. Romney for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Lilia E. Garcia and Erika Hiramatsu, Deputy Attorneys General, for Plaintiff and Respondent.

* Judge Brown denied the motion to traverse the search warrant. Judge Elwell presided over the trial and made the remainder of the contested rulings.

Defendant Randy Jay Brown was observed outside his truck, which was equipped with several red and blue lights and a siren, talking to another driver, whom he appeared to have pulled over. He was overheard telling the driver that he could write the person a ticket. Defendant was arrested, and his home and business were searched. Two prohibited assault weapons were found at the business.

Defendant was found guilty of impersonating a public officer, investigator, or inspector in violation of Penal Code section 146a, subdivision (b).[1] He was also found guilty of two counts of possessing assault weapons (a Colt AR-15 series and an AK-47) in violation of section 12280, subdivision (b). Defendant was placed on three years' formal probation, to include 240 days in county jail.

1. The trial court erred when it denied his motion to traverse the search warrant.

2. The trial court erred when it allowed in evidence of a statement made by the other driver.

3. The trial court improperly admitted hearsay testimony of news reports of persons impersonating police officers in the Rialto and Rancho Cucamonga areas.

4. The instruction on possession of an assault weapon was erroneous.

5. Insufficient evidence was presented to support defendant's conviction of impersonating a police officer under section 146a.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

We conclude that there were no prejudicial trial errors and that the evidence supported defendant's convictions. We affirm the judgment.

I

FACTUAL BACKGROUND

On March 28, 2006, Brawley Police Corporal Brian Harsany was in Rancho Cucamonga attending a training class at the sheriff's academy. He was driving an undercover vehicle equipped with a red and blue light on the passenger side visor that, when activated, showed a red solid light and a blue flashing light, red and blue strobe lights on the grill area, and a siren.

At 10:40 p.m., Corporal Harsany was driving on Archibald Avenue with his brother Ryan Harsany, who was in the passenger's seat. As they crossed Foothill Boulevard driving north on Archibald Avenue, they noticed on the other side of the street a gray truck that appeared to have lost control and crashed into the curb. As Corporal Harsany drove closer to the vehicle, he and Ryan observed a white truck being blocked by the gray truck. There were a male driver and a female passenger in the white truck. Corporal Harsany drove closer and saw a red steady light[2] and blue flashing lights emanating from the gray truck. Ryan also observed a red steady light and a blue flashing light.[3] A female passenger was in the gray truck. At that point, Corporal Harsany

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[2] At the preliminary hearing, Corporal Harsany testified he saw red and blue flashing lights, instead of a solid red light, but explained it was the way the question was asked.

[3] Corporal Harsany later discovered that what he took for a blue light was white, but from his vantage point looking through the tinted glass it appeared light blue.

[footnote continued on next page]

believed that the gray truck was an undercover vehicle and that defendant was conducting a traffic stop on the person in the white truck.

Corporal Harsany and Ryan observed defendant standing in the street yelling at the driver of the white truck. Corporal Harsany noted that defendant was violating several rules of traffic stops. He slowed down and rolled down his window so he could hear the conversation between defendant and the driver of the white truck to see if defendant needed any assistance.

Corporal Harsany heard defendant say to the driver of the white truck, "You almost fucking hit me. You are all over the road. I can write you a fucking ticket." Ryan also heard defendant tell the driver of the white truck he could give him a "fucking ticket." This raised Corporal Harsany's suspicions because this was not professional behavior for an officer. Ryan then heard the driver of the white truck say to defendant, "I'm sorry, Officer. I will slow down." Defendant did not respond.

Corporal Harsany gave defendant a "code four sign," which was law enforcement language between officers asking if assistance was needed. Defendant made eye contact with Corporal Harsany but did not respond. His demeanor visibly changed. He walked "briskly" back to his truck and got in. The flashing blue and steady red lights were turned off, and defendant started to drive away.

At that point, Corporal Harsany was not sure if defendant was a police officer or someone impersonating a police officer. He dialed 911. The dispatcher asked for the

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[footnote continued from previous page]
Ryan also indicated that looking through the tinted windows made the light look like it was blue.

license plate number on the gray truck. The plate did not come back as a police vehicle but as belonging to defendant and an air conditioning and heating business. There also were no reports of an undercover officer in the area. The dispatcher asked Corporal Harsany to follow the gray truck.

Defendant drove five or six blocks and pulled into a business park in Rancho Cucamonga, where his heating and air conditioning business was located. Corporal Harsany parked away from the business and waited for law enforcement to arrive.

After meeting with Corporal Harsany, San Bernardino County Sheriff's Deputy Evan Roberts drove around the corner and observed defendant standing 50 feet from the gray truck. Deputy Roberts asked defendant if he had any "police powers." Defendant responded that he had worked in the past for the sheriff's department recovering stolen vehicles. He admitted he had no police powers. He first denied that he had a siren in his vehicle, but said he had an air horn. He then admitted he also had a siren but denied he had used it to stop the white truck.

Defendant told Deputy Roberts that he had been driving on Archibald when he observed the white truck weaving in and out of traffic. He felt it was a traffic hazard so he used the lights on this truck to initiate a stop on the vehicle. He used the red and white light on the visor. He then had a short conversation with the driver of the white truck about driving safely.

While defendant and Deputy Roberts were speaking, defendant mentioned he had been inside his business. Deputy Roberts had been told there had been a female passenger in the truck, but she was not present. He entered the business to do a security

sweep and to look for the female passenger. Defendant told Deputy Roberts he did not want him going into the business, which made the deputy suspicious. When no one was found inside, Deputy Roberts told defendant to lock and secure the business.

Deputy Rob Page responded to assist Deputy Roberts. Defendant consented to a search of his truck. On the visor, the red and white light was recovered. There was a power cord running from it to the cigarette lighter. The light was functioning. There was also a public address system/siren commonly used in law enforcement vehicles found inside the truck. The speaker was wired from the system in the center console to the front of the vehicle. It was operational. On the front grill of the truck, defendant had hidden red and blue lights commonly found in undercover law enforcement vehicles. The lights were connected to the fog lamp switch in the truck. He was also carrying several large flashlights. He had a hand-held radio or walkie-talkie that looked like those commonly used by law enforcement. The truck was equipped with everything necessary to pull over another vehicle. It was illegal to have a siren in a personal vehicle.

Defendant was arrested. Deputy Page spoke with him at the station. Defendant also told Deputy Page he observed the driver of the white truck driving erratically and initiated a traffic stop. He sounded his air horn twice and got in front of the truck. He activated his red and white light. Defendant spoke with the driver of the white truck and told him to slow down.

On March 29, 2006, a search was conducted at defendant's residence. The purpose of the search warrant was determine if defendant possessed any further items associating him with law enforcement. Several shoulder gun holsters commonly used by

law enforcement, handcuffs, several catalogs of law enforcement equipment, and law enforcement training manuals were found. He had a registration form for a sheriff's deputy examination. A T-shirt with the word "police" written in yellow was found, along with a cap with the word "sheriff" on it. These items were commonly used by law enforcement officers.

The same day, a search of defendant's business (where he was originally arrested) was conducted. Defendant owned and operated the business. Several catalogs for law enforcement equipment were found. A police siren, a red light, and another public address system were found. There was an invoice in defendant's name for the red and white light on the visor in his truck. A flashing light that was made only for law enforcement vehicles was found.

Two safes were found in the business. Inside one safe, an AK-47 assault weapon was found, along with 7.62 bullets that could be used in it. A Colt AR-15 series assault weapon was also found along with .223 ammunition that could be used in it. Loaded magazines for the AK-47 were found. Defendant had not registered the assault weapons.

The rifles found at defendant's business were on the prohibited assault weapons list. The weapons were clearly stamped with "AK-47" and "AR-15," respectively.

Defendant presented the testimony of his son, Daniel Brown. Daniel claimed ownership of some of the items in defendant's home, including the sheriff's hat and police shirt. Daniel claimed to have been in the passenger's seat in defendant's truck when they observed a white truck driving erratically. Defendant put on his "emergency flashers," which Daniel explained was the red and white light on the visor. Defendant

pulled in front of the truck. Defendant got out of the truck and went to talk to the driver of the truck for 20 to 30 seconds. Daniel saw another car approach while defendant was out of the truck. Defendant got back in the truck, and they drove away. They drove back to the business, where Daniel was picked up by a friend.

Daniel claimed defendant's truck was equipped with lights and a siren because he was making a movie and was using it in the movie.

Defendant testified for himself. He had taken courses to be a reserve police officer and had applied with the Ontario Police Department. He was never hired and got busy with his heating and air conditioning business. The business was a corporation entirely held by defendant and his parents. He had five employees, who had access to his office.

The radio found in his car was used when he was flying to monitor aviation frequencies.

Defendant and his friend Tim Guerrero[4] were working on a movie together. He had ordered all of the equipment on his truck because the movie was going to include a police chase in the desert. The siren in the car was for use in the movie; he had never used it on the street. Since he had ordered the equipment, he received numerous catalogs.

He claimed the white truck crossed near him and almost hit him. It then drove erratically. Defendant claimed that he stopped the white truck to stop the erratic driving. He briefly spoke with the driver. He never saw Corporal Harsany try to signal him.

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[4] Guerrero testified that he and defendant were making a movie together but had not started filming.

Defendant admitted he purchased some items from the law enforcement catalog, including the siren, long before they had plans to make a movie.

Defendant admitted that he knew the AK-47 used 7.62 ammunition and the AR-15 used .223 ammunition. He claimed that his parents were the only ones with the combination to the safe where the assault weapons were found. However, he admitted that some of the items in the safe belonged to him.

II

SEARCH WARRANT AFFIDAVIT

Defendant contends the trial court erred in ruling he was not entitled to a hearing pursuant to *Franks v. Delaware* (1978) 438 U.S. 154 [98 S.Ct. 2674, 57 L.Ed.2d 667] (*Franks*) to challenge the statements contained in the affidavit of probable cause, arguing the affidavit used to secure the search warrant contained statements that were deliberately false or made with reckless disregard for the truth.[5]

A. *Additional Factual Background*

The affidavit in support of the search warrant provided in substance on the issue of probable cause that Deputies Roberts and Page had responded to defendant's place of business based on a report from Corporal Harsany. Detective Pleasant, the detective assigned to investigate the case and who prepared the search warrant, stated that the deputies were told by Corporal Harsany, "[H]e observed what he presumed to be a traffic

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[5] Defendant addresses the good faith exception to a search warrant under *United States v. Leon* (1984) 468 U.S. 897, [104 S.Ct. 3405, 82 L.Ed. 677], and the People address inevitable discovery. However, since we conclude the affidavit supported probable cause, we need not address the issue.

stop at the location of Archibald s/o Foothill. Officer B. Harsany observed a full size 4-dr blk Ram Dodge p/u truck conducting a traffic stop with the lights and siren s/b on Archibald from Foothill. Officer Harsany thought the traffic stop was odd due to the fact that the Dodge Ram truck was in front of the stopped vehicle. He turned his unmarked patrol unit around to offer some assistance, but when the male subject in the Dodge Ram truck saw him he sped away from the location. Officer B. Harsany followed the Dodge Ram truck to the business . . . and notified Rancho Cucamonga Sheriff's deputies." (Capitalization omitted.)

The affidavit further provided that defendant was contacted. It provided, "Brown's vehicle was found to be equip[p]ed with red and blue front facing lights, red and white rear lights, a public address system, an air horn, and a functioning siren. Brown stated under *Miranda*[6] that he stopped the vehicle because it was driving e[r]ratically. While in front of the business owned and operated by Brown he asked Deputy Page if he could lock and secure his business. While securing the business, Deputy Page observed in plain view a siren similar to the one Brown had on his vehicle." (Capitalization omitted.)

Defendant brought a motion to traverse and quash the search warrant and suppress the evidence against him, contending the search warrant was based on deliberately or recklessly erroneous material facts, and anything seized due to the warrant must be suppressed. He claimed that two statements in the affidavit were incorrect: that Corporal

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6 *Miranda v. Arizona* (1966) 384 U.S. 43 [86 S.Ct. 1602, 16 L.Ed.2d 694].

Harsany saw defendant conduct a traffic stop with lights and siren and that Deputy Page observed a siren in plain view in the business.

At the hearing on the matter, the trial court advised defendant that before a full-blown hearing was going to be conducted, he had to make a "substantial preliminary showing" that the affidavit contained statements that were deliberate falsehoods or reckless disregard for the truth and that such falsehoods were material to the issue of probable cause.

The trial court then recounted that the police report stated that defendant's truck had a functioning siren, lights, and police scanner. Deputy Page had testified at the preliminary hearing that a red and white light was attached to the visor, a red and blue light was attached to the front grill, and a public address system and numerous flashlights were found in the truck. Deputy Page had also testified these items were consistent with law enforcement. The trial court indicated that whether the protective sweep of defendant's business was justified was "a close one."

Defendant argued that the statements that he used lights and sirens to effectuate the traffic stop were false. Corporal Harsany did not witness a traffic stop. The radio found in the truck was an aircraft scanner, not a police scanner. Without these items and the protective sweep at the business, defendant argued, there was no probable cause to support the search warrant. The trial court concluded that, even without the siren, there was sufficient probable cause to have issued the search warrant. Defendant had failed to make "a prima facie case that the affidavit contains deliberate falsehoods or reckless disregards and that they were material to the issue of probable cause."

B. *Analysis*

"In *Franks v. Delaware*[, *supra*, 438 U.S. 154], the United States Supreme Court held that a defendant may challenge the veracity of the search warrant's affidavit due to police misconduct, but only upon a substantial preliminary showing that the affiant lied and that the remaining contentions in the affidavit are insufficient to establish probable cause." (*People v. Navarro* (2006) 138 Cal.App.4th 146, 165.) "Generally, in order to prevail on such a challenge, the defendant must demonstrate that (1) the affidavit included a false statement made 'knowingly and intentionally, or with reckless disregard for the truth,' and (2) 'the allegedly false statement is necessary to the finding of probable cause.' [Citation.]" (*People v. Hobbs* (1994) 7 Cal.4th 948, 974.) "However, innocent or negligent misrepresentations will not defeat a warrant. [Citation.]" (*People v. Benjamin* (1999) 77 Cal.App.4th 264, 271.)

We review the trial court's decision to not hold a *Franks* hearing de novo on appeal. (*People v. Benjamin, supra,* 77 Cal.App.4th at p. 271.)

Initially, since the trial court did not rely upon the siren seen in the business in assessing whether defendant had made a showing to support a hearing, we will also excise that evidence from the affidavit. We next address whether the statement in the affidavit that "[t]he off-duty Officer B. Harsany from Brawley P.D. advised them that he observed a full size 4-dr blk Ram Dodge p/u truck conducting a traffic stop with the lights and siren s/b on Archibald from Foothill" was deliberately false or a reckless disregard for the truth. At the preliminary hearing, Corporal Harsany testified that he first thought defendant's truck hit the curb and then saw the white truck. He also stated

he saw a blue and red flashing light on the visor of defendant's truck. He then testified, "It appeared to be that it might have been an undercover police officer conducting a traffic stop."

The affidavit does not appear to be deliberately false or a reckless disregard for the truth. Rather it is more akin to a negligent misrepresentation that does not defeat a warrant. (*People v. Benjamin, supra,* 77 Cal.App.4th at p. 271.) It was somewhat misleading as worded, as it did appear to state that Corporal Harsany saw a traffic stop where defendant used lights and sirens. However, Corporal Harsany reported that he came upon the incident after the gray and white trucks were already stopped, that he thought defendant was making a traffic stop, and that defendant was using flashing lights. Nonetheless, in an abundance of caution, we review whether there was probable cause without this statement and the siren seen in plain view.

To determine whether probable cause supports issuance of a search warrant, the magistrate makes "a practical, common-sense decision whether, given all the circumstances set forth in the affidavit . . . , there is a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 238 [103 S.Ct. 2317, 76 L.Ed.2d 527]; see also *People v. Cook* (1978) 22 Cal.3d 67, 84, fn. 6.) "And the duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis for . . . [concluding]' that probable cause existed." (*Gates,* at pp. 238-239.) We pay "'great deference'" to the magistrate's determination. (*Id*. at p. 236.) "Doubtful or marginal cases are to be resolved by the preference to be

accorded to warrants. [Citation.]" (*People v. Mikesell* (1996) 46 Cal.App.4th 1711, 1716.)

Here, even if we redact the siren seen in plain view in the business and assume that the affidavit presents a false and misleading statement that Corporal Harsany observed defendant actually stop the driver of the white truck by using a siren and flashing red and blue lights, the warrant was still supported by probable cause. The affidavit provided that defendant's truck was equipped with numerous items, including lights and siren. Defendant immediately fled the scene when he saw Corporal Harsany approach and drove to his place of business. Further, defendant's statement that he "stopped" the driver of the white truck for driving erratically was included. Defendant asked the officers to lock and secure his business. The search warrant sought items at defendant's place of business that were normally used by law enforcement.

Defendant does not contend that any these statements were false. Rather, he insists there was no connection between these statements and the possibility of finding law enforcement items in the business and in his home. We disagree. The affidavit supported that defendant's truck was riddled with law enforcement equipment. It defies logic that he would have no further items in this home or business. We conclude that there was a substantial basis for concluding that probable cause existed to search defendant's home and business for items normally used by law enforcement.

III

STATEMENT BY DRIVER OF WHITE TRUCK

Defendant contends that the trial court erred by allowing Ryan's testimony that he overheard the driver of the white truck say to defendant, "I'm sorry, officer. I will slow down," and that defendant failed to respond, as an adoptive admission.

A. *Additional Factual Background*

During examination of Ryan Harsany, the People sought to introduce testimony that Ryan overheard the driver of the white truck say to defendant, "I'm sorry, Officer. I will slow down." The People, assuming it was hearsay, sought to admit the statement as an adoptive admission under Evidence Code section 1221, because defendant did not respond, thereby accepting his role as an officer. The People also asserted that the statement was not hearsay, but rather evidence to prove the state of mind of the declarant under Evidence Code sections 1250 and 1252, in showing the driver of the white truck felt he was threatened, arrested, or detained. Defendant argued the evidence was hearsay: It was being offered to prove that the driver of the white truck thought defendant was an officer.

The trial court concluded that whether or not the statement itself was hearsay was subsumed in the issue of whether it was an adoptive admission. "I think under the circumstances if all of that can be shown or elicited, it would constitute an adoptive admission which would be an exception to the hearsay rule." In addition, the trial court noted, "It is the defendant's or the charged party's reaction to it which becomes relevant. If the defendant treats it as if it were true, then that's what gives it its value." It then

noted that it felt the statement was not hearsay, but even if it was, it was an adoptive admission.

At the time the parties discussed the jury instructions, defendant objected to Judicial Council of California Criminal Jury Instruction (CALCRIM) No. 357 regarding adoptive admissions; the objection was overruled. The instruction provided to the jury, "If you conclude that someone made a statement outside of court that tended to connect the defendant with the commission of the crime and the defendant did not deny it, you must decide whether each of the following is true: The statement was made to the defendant or in his presence. [¶] The defendant heard and understood the statement. [¶] The defendant would under all the circumstances naturally have denied the statement if he thought it was not true, and the defendant could have denied it but did not. [¶] If you decide that all of these requirements have been met, you may conclude that the defendant admitted the statement was true. If you decide that any of these requirements have not been met, you must not consider either the statement or the defendant's response for any purpose."

B. *Analysis*

An out-of-court statement that is offered to prove the truth of the matter stated therein constitutes hearsay and is inadmissible absent an applicable exception. (Evid. Code, § 1200.) "An out-of-court statement is properly admitted if a nonhearsay purpose for admitting the statement is identified, and the nonhearsay purpose is relevant to an issue in dispute. [Citations.]" (*People v. Turner* (1994) 8 Cal.4th 137, 189, overruled on

another ground in *People v. Griffin* (2004) 33 Cal.4th 536, 555, fn. 5; see also *People v. Davis* (2005) 36 Cal.4th 510, 535-536.)

Initially, this statement was clearly relevant to the case. "No evidence is admissible except relevant evidence." (Evid. Code, § 350.) Showing that defendant was faced with an accusation that he was a police officer and that he did not deny it tended to prove the elements of the crime of impersonating an officer, as discussed, *post*.

The People offer that the statement was introduced for a nonhearsay purpose: to establish the declarant's (the driver of the white truck's) state of mind. The People note that in order to prove the allegation that defendant was impersonating an officer, it had to show that the driver of the white truck believed he was being arrested, detained, or threatened by defendant.

Section 146a is violated if "[a] person . . . falsely represents himself or herself to be a public officer, investigator, or inspector in any state department and . . . , in that assumed character, does any of the following: . . . (1) Arrests, detains, or threatens to arrest or detain any person."

Here, the evidence had a nonhearsay purpose to establish the driver of the white truck's state of mind in having defendant block his way and use the flashing lights. It was necessary to show not only that defendant was acting as an officer, but also that the driver of the white truck believed he was being arrested or detained by defendant. The statement was admitted for a proper nonhearsay purpose.

In addition, the statement could also be viewed as an adoptive admission by defendant, and the jury was therefore correctly instructed.

Evidence Code section 1221 provides, "Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth." As such, it "generally permits hearsay to be admitted against a party, when that party has adopted it or agreed that a statement, originally made by someone else, is true. The statute contemplates either explicit acceptance of another's statement or acquiescence in its truth by silence, equivocal or evasive conduct." (*People v. Castille* (2005) 129 Cal.App.4th 863, 876, fn. omitted.) "In determining whether a statement is admissible as an adoptive admission, a trial court must first decide whether there is evidence sufficient to sustain a finding that: (a) the defendant heard and understood the statement under circumstances that normally would call for a response; and (b) by words or conduct, the defendant adopted the statement as true. [Citations.]" (*People v. Davis, supra,* 36 Cal.4th at p. 535.)

We will uphold the admission of a statement as an adoptive admission unless the trial court has abused its discretion. (See *People v. Waidla* (2000) 22 Cal.4th 690, 725.)

Here, the record supports admitting the statement and giving the jury an instruction on adoptive admissions. Based on Ryan's testimony, defendant would have been expected to deny the driver of the white truck's statement that he was an officer. His failure to respond could constitute an adoption of the other driver's belief that he was acting as a law enforcement officer.

Defendant complains that the statement by the driver was not accusatory and that he did not have time to respond. There was no requirement, however, that the driver of

the white truck make an accusation against defendant. Evidence Code section 1221 only requires a statement made by one party that another party adopts by words or conduct. (*People v. Davis, supra*, 36 Cal.4th at p. 535.) "[A] direct accusation in so many words is not essential." (*People v. Fauber* (1992) 2 Cal.4th 792, 852.) As to his contention that he did not have time to deny the statement, the jury was instructed to take into account whether defendant "*could have* denied it but did not." (Italics added.) Assuming the jury found the statement was an adoptive admission, there was adequate evidence before it to conclude defendant heard the statement and, by his silence, acquiesced in the statement.

Finally, even if the statement was improperly admitted, ample other evidence supported the determination in this case to support that defendant was impersonating an officer, as will be discussed, *post*, in discussing the sufficiency of the evidence. As such, even if there was error, it is not reasonably probable that he would have received a more favorable outcome. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) We reject that the admission of the statement requires reversal.

IV

RELEVANCY OF STATEMENTS OF NEWS REPORTS THAT A PERSON WAS POSING AS A POLICE OFFCER IN THE RIALTO AND RANCHO CUCAMONGA AREAS

Defendant does not contend, as he did in the lower court, that the statement made by Ryan to Corporal Harsany that there were news reports of persons posing as police officers in Rialto and Rancho Cucamonga pulling over people to get money was inadmissible hearsay; rather, he now argues the evidence was not relevant.

A. *Additional Factual Background*

During direct examination of Ryan, the People asked him if he said anything to Corporal Harsany when they made the U-turn. Ryan began to respond that three or four weeks prior to the incident he had heard a news report. Defendant objected on hearsay grounds. The trial court asked the People if it was not being offered for its truth. The People responded, "Yes." The objection was overruled subject to a motion to strike. The People then asked Ryan what he told his brother. Ryan responded, "I told my brother that I had heard on the news that there was a person pulling over people in Rialto for money . . . pretending to be police officers." Ryan told this to Corporal Harsany because he thought defendant might not be a real police officer.

The trial court then immediately admonished the jury, "Let me just clarify for the jury. You just heard me ramble off legal gobbledygook. Exactly what I meant is the statement that the witness just made about something he heard about somebody committing crimes from the Rialto and Rancho Cucamonga area and so forth was not admitted for the truth of the matter stated. [¶] In other words, this witness stated he heard that information and conveyed it to his brother. But we have no idea whether it was true. So you are not to accept it as true, simply that that statement was made and that it was conveyed to his brother, the other Mr. Harsany. And that's the only reason it has come in."

B. *Analysis*

As set forth, *ante*, only relevant evidence is admissible. (Evid. Code, § 350.) "An out-of-court statement is properly admitted if a nonhearsay purpose for admitting the

statement is identified, and the nonhearsay purpose is relevant to an issue in dispute." (*People v. Turner, supra,* 8 Cal.4th at p. 189.)

Defendant now argues that Ryan's testimony regarding the news reports, if it was admitted for a nonhearsay purpose, was not relevant to the issues disputed in the case. Defendant did not object on these grounds in the trial court below. It is axiomatic that in order to raise a claim on appeal of improper admission of evidence, an objection on the same ground must have been raised in the trial court below. (*People v. Eckstrom* (1986) 187 Cal.App.3d 323, 332 [failure to object to evidence on the same ground as urged on appeal precludes appellate review of the issue].) Although defendant claims he did not have time to make a relevance objection, that is not evident from the record. Defendant clearly could have made an objection that the testimony was irrelevant and brought a motion to strike, but he failed to do so. As such, he has waived the claim on appeal.

Even if we were to consider the claim, however, we would find the evidence was relevant to the disputed issues in the case. The People contend the statement was relevant to show why Corporal Harsany rolled down his window to listen to defendant and why he gave defendant a "code four" sign rather than verbally offer his assistance. This evidence was relevant for these reasons, but also to show Corporal Harsany reasonably had a heightened suspicion that defendant was posing as a police officer.

Further, to the extent that defendant argues that the "irrelevant testimony basically told the jury that appellant might very well be this individual who was posing as a police officer and robbing people," we disagree. The jury was clearly admonished that it was only to consider the statement for a nonhearsay purpose and to not accept the statement

as true. Although defendant contends that the jury would not have understood the admonition, the trial court explained clearly to the jury that they were not to consider the statement by Ryan as true, and we must presume on appeal that the jurors understood and followed the court's instructions. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1005; *People v. Valladares* (2009) 173 Cal.App.4th 1388, 1400.)

Defendant does not address how this error, if it was error, prejudiced him; he merely states that the cumulative nature of all the asserted errors warrants reversal. However, he is required to make any cumulative-error contention under a separate heading and support that contention with argument and citation to authority. (Cal. Rules of Court, rules 8.204, 8.360.) As we find no error with regard to this or any of defendant's other contentions, and no prejudice even if there were, any cumulative error argument also fails.

V

INSTRUCTIONAL ERROR ON POSSESSION OF AN ASSAULT WEAPON

Defendant contends that the jury was not properly instructed on the charge of possession of an assault weapon and specifically on the scienter requirement that he knew or reasonably should have known that the AK-47 and AR-15 rifles he possessed were prohibited assault weapons.

A. *Additional Factual Background*

Without objection from defendant, the jury was instructed with CALCRIM No. 250, the general intent instruction. It instructed, as modified by the trial court, "The crimes charged in this case in Counts 2 and 3 the possession of an assault weapon require

proof of the union or joint operation of an act and wrongful general intent. For you to find a person guilty of the crime of possession of an assault weapon as charged in counts 2 and 3, that person must not only commit the prohibited act but must do so with wrongful intent and a person acts with wrongful intent when he or she intentionally does a prohibited act. However, it is not required that he or she intend to break the law and the act required is explained in the instruction for that crime." They were also charged with a modified version of CALCRIM No. 251, which informed the jury, "For you to find a person guilty of the crime of possession of an assault weapon as charged in Counts 2 and 3, that person must not only intentionally commit the prohibited acts but must do so with a specific mental state and the acts and the specific mental states required are explained in the instructions for those crimes." Finally the jury was given separate instructions on the definition of unlawfully possession of an assault weapon, specifically an AR-15 and AK-47. Within these instructions, they were advised, "To prove that the defendant is guilty of this crime, the People must prove that the defendant possessed an assault weapon specifically a Colt AR-15 assault rifle (and a AK-47 assault rifle), and, two, the defendant knew that he possessed it and, three, the defendant knew or reasonably should have known that it had characteristics that made it an assault weapon." The jury was also instructed to "[p]ay careful attention to all of these instructions and consider them together."

B. *Analysis*[7]

Section 12280, subdivision (b), which is part of the Roberti-Roos Assault Weapons Control Act of 1989 (AWCA), provides in pertinent part: "Any person who, within this state, possesses any assault weapon, except as provided in this chapter, shall be punished by imprisonment in a county jail for a period not exceeding one year, or by imprisonment in the state prison." The AK-47 and Colt AR-15 are listed as prohibited assault weapons. (§ 12276, subd. (a)(1)(A), (5).)

"In a prosecution under section 12280[, subdivision] (b), . . . , the People bear the burden of proving the defendant *knew or reasonably should have known* the firearm possessed the characteristics bringing it within the AWCA." (*In re Jorge M.* (2000) 23 Cal.4th 866, 887, fn. omitted.) "The question of the defendant's knowledge or negligence is, of course, for the trier of fact to determine, and depends heavily on the individual facts establishing possession in each case." (*Id.* at pp. 887-888.)

As set forth, *ante*, the jury was given several instructions on the crime of violating section 12280. Although defendant complains that the first instruction on the required mental state did not include the *scienter* requirement for the possession of the assault weapons, he ignores the fact that the jury was instructed to consider the instructions as a

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[7] We note that defendant did not object to the instructions as given in the lower court, which, with minor modification, were the standard jury instructions. Generally, a challenge that an instruction correct in the law is incomplete is forfeited if the party does not propose clarifying or amplifying language to the trial court. (See *People v. Hart* (1999) 20 Cal.4th 546, 622.) However, assuming that defendant is correct and the instruction was incorrect, the trial court has a sua sponte obligation to correctly instruct the jury on the legal principles applicable to the case. Hence, we will review the claim.

whole. Further, the jury was advised to look at the instructions for each crime. We do not believe the jury would have found defendant guilty based on his mere possession of the weapons.

Further, the jury was made aware in the instructions that they had to find defendant knew or reasonably should have known the AK-47 and AR-15 were assault weapons. During closing argument, the People argued that defendant knew the AK-47 and AR-15 were banned assault weapons because the guns were labeled with their names. Defendant could see the label on the guns and was required to know what the law was. The fact that an assault weapon has the name stamped on it has been found to be sufficient to support that the possessor knew or should have known that it was an assault weapon. (*In re Jorge M.*, *supra*, 23 Cal.4th at p. 888.)

The jury was properly instructed, and the evidence supported defendant's conviction.

VI

INSUFFICIENT EVIDENCE OF IMPERSONATING A POLICE OFFICER

Defendant contends that the evidence was insufficient to support his conviction of impersonating a public officer under section 146a. Despite his providing no argument or citation to the record, we briefly address the issue.

A. *Standard of Review*

"We often address claims of insufficient evidence, and the standard of review is settled. 'A reviewing court faced with such a claim determines "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could

have found the essential elements of the crime beyond a reasonable doubt." [Citations.] We examine the record to determine "whether it shows evidence that is reasonable, credible and of solid value from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt." [Citation.] Further, "the appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence."' [Citations.]" (*People v. Moon* (2005) 37 Cal.4th 1, 22.)

B. *Analysis*

As set forth, *ante*, in order to show that defendant was impersonating an officer, the People had to show (1) defendant falsely represented himself as a public officer with the specific intent of inducing another person to believe that he was a public officer, and (2) that defendant in that role arrested, detained, or threatened to arrest or detain a person or otherwise intimidated any person. (Pen. Code, § 146a, subd. (b).)

The evidence here clearly established both prongs. Defendant had equipped his truck with red and blue lights, a solid red light with a flashing white light, and a siren. These were commonly used by law enforcement officers on undercover vehicles to pull over drivers. Defendant had blocked the driver of the white truck's way and had activated the red and white lights. He admitted to officers during questioning that he had activated his red and white lights and pulled in front of the white truck. Defendant was overheard telling the driver that he could write him a ticket. Although not necessary to finding defendant guilty, he also did not deny that he was an officer when the driver of the white truck called him one.

The evidence clearly established that defendant was impersonating an officer in order to convict him of violating section 146a.

VII

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

RAMIREZ
P.J.

McKINSTER
J.